



GOVERNMENT
OF MALTA

Malta Financial Services Oversight newsletter

AUGUST 2020



A portrait of Dr. Edward Zammit Lewis, Minister for Justice, Equality and Governance, smiling. He is wearing a dark suit, white shirt, and dark tie. In the background, the Maltese flag and the European Union flag are visible, along with a lamp and a framed picture on the wall.

Foreword by the
Minister for Justice, Equality and Governance
Dr Edward Zammit Lewis

While the COVID-19 pandemic may have temporarily halted Malta's society, economy and business, it has failed to dampen our reforming zeal. I am delighted to have the opportunity to lay out the latest, various reforms we have executed in the judicial space in recent months.

Four key bills passed in Parliament last month will, I believe, transform our Country for the better. Malta's President must now be chosen by a two thirds' majority in Parliament, boosting the need for cross-party support. Our Chief Justice and other senior officials will be chosen in the same way. The President will now also have the final decision on who becomes a judge, previously the prerogative of the Prime Minister's office. These changes will help us to meet our international obligations, as well as the recommendations laid out by the Venice Commission and the European Commission. But the reforms are important too because they will strengthen the rule of law in Malta, they allow for and sustain diversity of opinion, and they promote dialogue across the political spectrum. In achieving all this, the legislative changes will enrich our democracy.

These reforms build on earlier, important changes implemented to strengthen our institutions. The Government has already transformed the way our Commissioner of Police is chosen, opening up the selection process to greater scrutiny and giving Parliament the final say. Government has also separated the roles and responsibilities between the Prosecution Service and the State Advocate to speed up justice and make it more effective

More remains to be done to achieve our goals. Needless to say that, going into 2021 and beyond, we are determined to sustain our reform programme with more exciting changes to come.

in this news letter

Malta's Parliament approves landmark bills to reform judiciary, strengthen rule of law

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Malta's Parliament approves landmark bills to reform Judiciary, strengthen rule of law

Malta's House of Representatives has unanimously approved four landmark bills that will usher in some of the most significant constitutional and institutional reforms since Malta became a Republic in 1974. The changes reflect recommendations made by the Council of Europe's Venice Commission and represent a shift in power away from the Government by giving more autonomy and influence to Malta's elected Parliament and President.

As part of the reforms, the President of Malta will now be appointed by a two-thirds majority in Parliament compared to a simple majority previously, and thereby boosting the need for cross-party support for this key appointment. In addition, the appointment of the Chief Justice must also now garner the support of a two-thirds majority, along with the Ombudsman and the Chairperson of the Permanent Commission Against Corruption. The way judges are appointed is also being reformed and going forward it will be the President who decides these appointments on the advice of the Judicial Appointments Committee, and no longer at the discretion of the Government.

In a boost for accountability, decisions by the Auditor General not to prosecute certain cases can be challenged by various bodies, including the Permanent Commission Against Corruption, the Ombudsman and the Commissioner for Standards in the event of corruption cases that they have referred to the Attorney General. In doing so the bill offers for the first time the opportunity to launch a legal challenge against the Government in cases where it declines to investigate allegations of corruption.

These latest Bills approved by Parliament build on the reforms recently implemented including the method by which Malta's Commissioner of Police is appointed, as well as the separation between the prosecution service and the newly established state advocate, which assumed the role of Government's chief legal advisor.

Malta to empower **ARB** to seize assets in boost to fight **against organized crime**

Malta's Justice **Minister Edward Zammit Lewis** has confirmed plans to bring a fresh Bill before Parliament enabling the Asset Recovery Bureau ('ARB') to seize assets it suspects were acquired through criminal means. As the law currently stands, the ARB must initiate criminal proceedings to do so, and has to prove beyond reasonable doubt in a court of law that a defendant bought their assets using dirty money.

That has slowed down confiscations and made it harder for Malta's authorities to clamp down on money laundering and other financial crimes.

Under the proposed Bill, the ARB will be empowered to file civil proceedings, meaning that the law will place the burden of proof on the individual to demonstrate that their assets were acquired legally. The ARB will also be able to seize assets immediately before waiting for the outcome of a case, as is currently the situation. The Court will also determine each case on the balance of probability, a lower threshold than in criminal proceedings.

The Justice Minister said:



This is a clear commitment on the part of the government to seriously fight organised crime, money laundering and serious cross border crime...This is a breakthrough law introducing new concepts within our legal system, such as non-conviction-based confiscation and civil actions against objects that are proceeds of crime."

It is expected that the Bill will be brought before Parliament in October, once it reconvenes.

Residual Balances Fund Act passed: **new tool in fight against financial crime**

The Residual Balances Fund Act (the “Act”) was published on the 11 August 2020 as Act XLVIII of 2020. The principal purpose and object of the Act is to facilitate the dissolution and winding up process of a solvent credit institution, where all deposit liabilities are covered by sufficient assets, whilst also ensuring that AML/CFT laws are respected throughout the process.

In the above context, the Act allows all deposit liabilities of a credit institution together with the corresponding value of assets of that credit institution, including potentially problematic accounts, to be transferred out of the credit institution and to the Residual Balances Fund (the “Fund”) set up specifically for this purpose under the Act.

This will allow the credit institution itself to be wound up without having to wait for all depositors to be paid out, as the obligations of paying out the deposits, and where necessary undertake additional due diligence processes for AML/CFT purposes, will have to be conducted by the Fund.

The Act empowers the Malta Financial Services Authority (the “MFSA”) to issue one or more deposit liability transfer instruments to require a solvent credit institution to transfer all its deposit liabilities and the corresponding deposit assets to the Fund, together with all of the property or rights pertaining to such deposits, if the MFSA

determines that the conditions stipulated in the law are satisfied. Once the transfer is completed in terms of the said deposit liability transfer instrument/s, the Fund is to notify the depositors accordingly.

With respect to the Fund, The primary function thereof is that of releasing the transferred deposit liabilities in accordance with the provisions of the law and subject to a compliance review to be conducted for the purpose of ensuring that the necessary AML/CFT checks are being adhered to. Following the release of the transferred deposit liabilities and the settlement of other disbursements in line with the provisions of the Act, the Fund shall use the remaining balances in the public interest.

MFSA Enforcement Action in August 2020

The MFSA has in recent years invested heavily in recruiting highly skilled professionals throughout the Authority, particularly in supervisory and enforcement roles. It also invested in new technology and in creating more efficient and effective processes, including enhanced risk-based supervision models. All this combined investment led to increased levels of on-site inspection and as a result an increased level of enforcement action in **2020**, as can be seen from the Supervisory and Enforcement Dashboard.

The MFSA has launched enforcement proceedings against four entities this month, levying fines of €15,000 each on two entities and stripping the other two of their licenses.

ARQ Fiduciaries Ltd and Grand Harbour Trustees Ltd, were fined for breaching the Trust and Trustees Act (Register of Beneficial Owners) Regulations.

Grand Harbour Ltd had breached three articles of the Act, whilst ARQ Fiduciaries Ltd failed to submit the declaration of beneficial ownership for trusts which generated tax consequences, and for which the Company acted as a trustee.

AYN Limited, a payment services provider, had its licence withdrawn due to a failure to adhere to pre-licensing conditions set by the Authority, which require the engagement of an Operations Manager and a Risk Manager respectively, as well as the timely confirmation of the appointment of the external auditor and the submission of the relevant outsourcing service agreement, as well as the engagement of internal auditor.

Corporate & Commercial FX Services Limited, another payment services provider, also had its licence removed after the MFSA found it had: failed to comply with its on-going conditional requirement to have at least two individuals who are effectively directing the business of the Institution based in Malta; failed to ensure and maintain an internal governance and risk; and had repeatedly failed to submit its Audited Financial Statements to the MFSA, the Auditor's Management Letters and the Statutory returns within the prescribed time frames. With the removal of the licence, Corporate & Commercial FX Services Limited is now obliged to proceed with returning all clients' funds held by the Institution according to the timelines indicated by the MFSA.

MFSA tightens application process for VFA Service Providers

The MFSA has set a 15 September 2020 deadline for all outstanding VFA Service Providers applications.

Applications deemed to be incomplete after this date will be shelved and applicants will be required to cease all VFA operations carried out in or from Malta, under the transitory period in terms of Article 62 of the Virtual Financial Assets Act. In order to further expedite the VFA Service Provider application process, the MFSA is also imposing a deadline for responses by applicants to its comments. Failure to respond within three weeks of receipt will result in the application being shelved.

The MFSA devised the Virtual Financial Assets Framework to support innovation and new technologies in financial services, particularly in the digital asset space, while at the same time seeking to ensure effective investor protection, financial market integrity and financial stability.

The VFA Framework was launched on 01 November 2018 by the Virtual Financial Assets Act which provided for a transitory period of one year for those VFA service providers already operating in or from Malta.

The transitory period came to an end on 31 October 2019, by which time VFA Service Providers intending to apply for a licence notified the MFSA, following which the application process was started.

The first applications started to be received at the end of December 2019.

Applications are currently being reviewed with a view of ensuring that only operators who are 'fit and proper' are granted a licence to operate in Malta.

The field of crypto assets is considered as high risk from an anti-money laundering perspective. Therefore, the MFSA is applying high standards of due diligence with regard to the review of applications for a VFA licence, including the verification that applicants have the necessary policies, procedures and systems in place to comply with anti-money laundering standards set by the Financial Action Task Force and have the required levels of governance to ensure proper conduct of business.

MFSA's strategy with regard to crypto assets is that of contributing towards the establishment of a sector made up of serious operators that are properly regulated and supervised at the highest level.

This is important for the integrity of Malta's financial system and in line with the expectations of international institutions such as the International Monetary Fund and MoneyVal.

FIAU to control cash sales of precious metals in AML boost

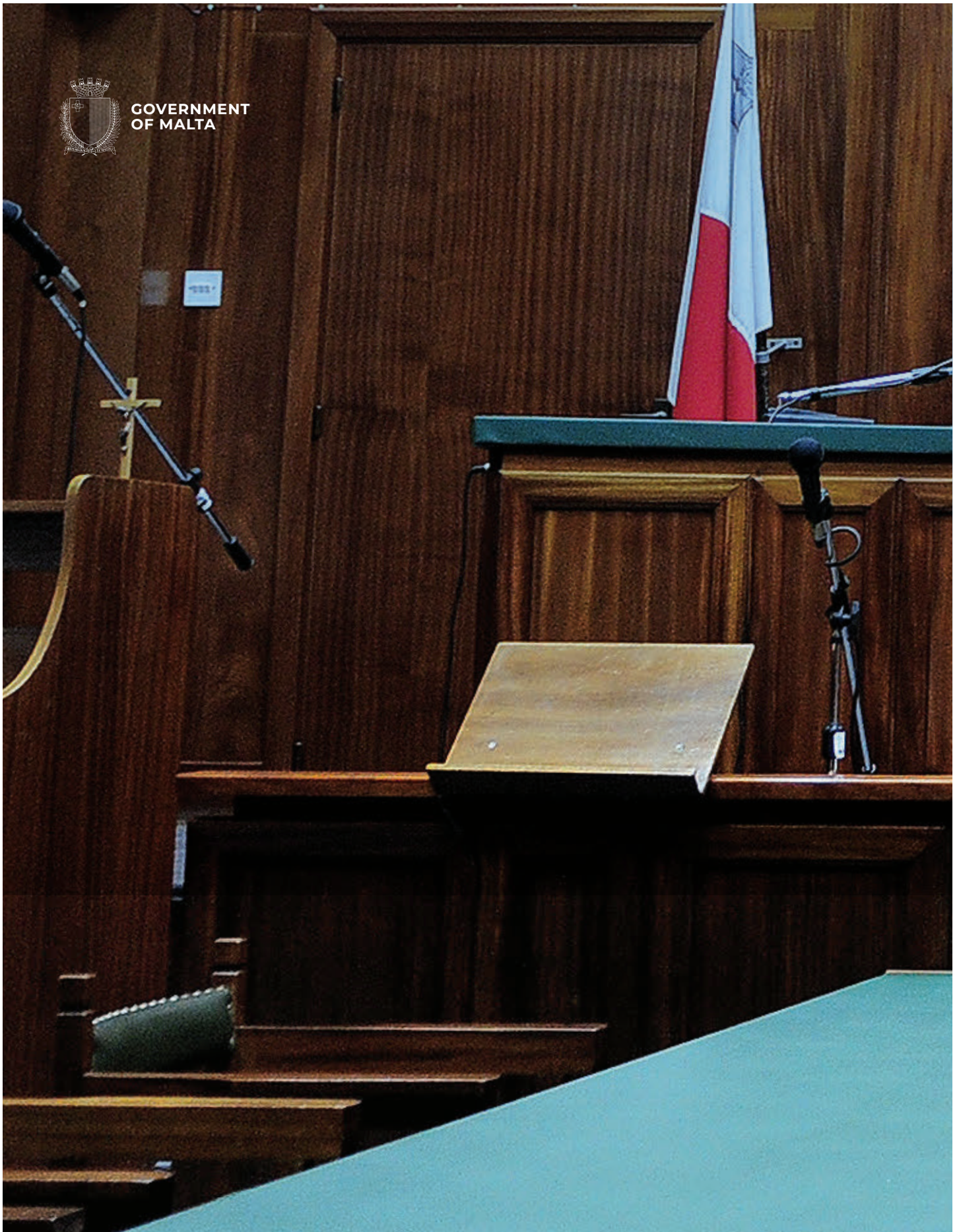
Despite all the challenges presented by the Covid19 scenario, the **FIAU has continued to work towards improving and consolidating legislation** that can assist in the fight against money laundering. With this in mind the FIAU has been entrusted by the Government with **drafting legislation to restrict cash transactions** in certain business spheres.

Malta's own national risk assessment on ML/FT highlighted that Malta still has a high level of hard cash transactions. This was acknowledged in the 5th Round of Malta's Mutual Evaluation Report by Moneyval in July 2019. The introduction of a cash restriction policy will strengthen Malta's AML/CFT cache of measures and legislation to boost the fight against money laundering.

The new legislation, set to be in place by the end of 2020, aims to control the cash flow used in the motor industry, real estate and in the sale and acquisition of precious metals and stones. With millions – be it in hard cash or not- flowing through these three industries, they have been identified as high risk for money laundering particularly when cash is used, and controlling this is an important step in mitigating this risk.

Whilst implementing the law at this stage is not an EU obligation, certain countries already have such laws in place; Malta's government believes this would be an important development, also possibly pre-empting EU wide implementation. Therefore, it has entrusted the FIAU with drafting, implementation, enforcement and supervision of this legislation.

By the end of the year, the FIAU will have also embarked on a nationwide campaign to ensure that all stakeholders concerned are aware and have access to the necessary information to fully understand how this legislative change will affect them.



Contributing Institutions